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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/819,126
Filing Date: March 27, 2001
Appellant(s): ERRICO, JAMES H.

Kurt Rohlfs
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/26/09 appealing from the Office action

mailed 10/30/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,020,883	HERZ et al.	1-2000
6,754,906	Finseth et al.	22-2004
5,410,344	GRAVES et al.	25-1995

(9) Grounds of Rejection

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1.   Claims 1-11, 13, 14, 25, 26, 27, 50, 51, 52, 53, 57, and 60 are rejected under 35

U.S.C. 103(a) as being unpatentable over Herz in view of Finseth.

Referring to claim 1, Herz discloses a method for selecting at least one of audio

and video (figure 1) comprising:

(a) receiving user attribute information that includes user preferences arranged in

hierarchical levels including at least a first level and a second level where said second

level of said user preferences includes preferences descriptive of one or more

preferences of said first level at a finer level of detail, wherein said first level includes

preferences that together encompass all preferences of said second level, and wherein

at least one of said preferences is at a first level and at least two of said preferences are

at a second level (figure 1, part 104; column 17, lines 52-61; column 27, lines 62-67;

column 28, lines 1-5);

(b) receiving program information corresponding to said at least one of said audio

and video, where said program information comprises attributes each corresponding to

a respective one of said user preferences (figure 1, part 102; column 28, lines 6-14);

(c) determining automatically the desirability to a user of said at least one of said

audio and video based upon jointly processing attributes of said program information

attributes and jointly processing preferences of said user attribute information including

first level said hierarchical levels of said user attribute information with said second level

of said hierarchical levels of said user attribute information (figure 1, part 106; column

27, lines 62-67; column 28, lines 1-14), said preferences include data selectively

indicative of at least a first, a second, and a third option (column 10, lines 51-60; column

11, lines 6-12);

(i) said first option including data indicative of the positive desirability of the

respective user preference (column 10, lines 51-60; column 11, lines 6-12);

(ii) said second option including data indicative of non-desirability of the

respective user preference (column 10, lines 51-60; column 11, lines 6-12); and

(iii) said third option including data indicative of indifference of the respective user

preference (column 10, lines 51-60; column 11, lines 6-12);

(d) wherein desirability of said at least one of said audio and video is increased

based upon any included program attribute corresponding to a preference that has data

indicative of said first option, desirability of said at least one of said audio and video is

decreased based upon an included program attribute corresponding to a preference

that has data indicative of said second option, and desirability of said at least one of

said audio and video is unaffected by any included program attribute corresponding to a

preference that has data indicative of said third option. (column 14, lines 20-33).

Herz does not disclose a method where said program information attributes each

include hierarchical levels including at least a first level and a second level where said

second level includes attributes descriptive of one or more attributes in said first level at

a finer level of detail, wherein said first level includes preferences that together

encompass all preferences of said second level, and wherein at least one of said

program information attributes is at a first level and at least two of said program

information attributes is at a second level; and wherein determining the desirability of

said at least one of said audio and video based upon jointly processing preferences of

at least said first level of said hierarchical levels of said program information with said

second level of said hierarchical levels of said program information attributes and

processing preferences of at least said first level and said second level of said

hierarchical levels of said user attribute information.

In an analogous art, Finseth teaches a method where said program information

attributes include hierarchical levels including at least a first level and a second level

where said second level of said program information attributes includes attributes

descriptive of one or more attributes in said first level at a finer level of detail, wherein

said first level includes attributes that together encompass all attributes of said second

level, and wherein determining the desirability of said at least one of said audio and

video based upon jointly processing preferences of at least said first level and said

second level of said hierarchical levels of said program information attributes and

processing preferences of at least said first level and said second level of said

hierarchical levels of said user attribute information (column 12, lines 47-48 and 53-57;

figure 4, parts 98A; Note: as the hierarchical program attributes found in figure 4 of

Finseth are found in the inputs to the agreement matrix calculation in Herz (column 28,

lines 6-14) it is interpreted as these hierarchical attributes being jointly processed).

At the time of the invention it would have been obvious for one of ordinary skill in

the art to use the hierarchical program attribute information taught by Finseth in the

method disclosed by Herz. The motivation would have been to provide a more intuitive

method of filtering the display of programs when provided in the EPG.

Claims 10, 50, and 60 are rejected on the same grounds as claim 1.

Regarding claim **2**, Herz teaches wherein said first option is a non-binary

preference value (column 10, lines 51-60).

Regarding claim **3**, Herz teaches wherein said second option is a non-binary

preference value (column 10, lines 51-60).

Referring to claim 4, Herz teaches wherein said first option is positive preference value (column 10, lines 51-60).

Referring to claim 5, Herz teaches wherein said second option is a negative preference value (column 11, lines 6-12).

Regarding claim **6,** Herz teaches wherein said preferences are adjustable by a user (column 14, lines 20-33).

Regarding claim **7**, Herz teaches wherein said preferences include at least one default value (column 11, lines 56-60).

Regarding claim **8**, Herz teaches wherein said preferences are adjustable by a user (column 14, lines 20-33).

Regarding claim **9**, Herz teaches wherein said determining results in a value (column 10, lines 51-60).

Regarding claim **11**, Herz teaches wherein said determining the desirability includes: (a) calculating a first ranking value for said first program attribute information; (b) calculating a second ranking value for said second program attribute information;

and (c) determining said relative ranking based upon said first ranking value and said

second ranking value (column 14, lines 20-33).

Regarding claim **13,** Herz teaches wherein said determining the desirability

includes and operation where, (a) said first program attribute information includes a first

attribute and free from a second attribute; (b) said second program attribute information

includes said first attribute and said second attribute; and (c) said determining said

relative ranking indicates said second program as more desirable than said first

program (column 14, lines 20-33).

Claim 25 is rejected on the same grounds as claims 1 and 13.

Regarding claim **14,** Graves teaches wherein said determining the desirability

includes and operation where, (a) said first program attribute information includes a first

attribute and free from a second attribute; (b) said second program attribute information

includes said first attribute and a relatively smaller presence of said second attribute in

comparison to said first attribute; and (c) said determining said relative ranking indicates

said second program as more desirable than said first program (column 14, lines 20-

33).

Regarding claim **26,** Herz teaches wherein said evaluating is free from combining

multiple preference values into a single composite preference value (column 10, lines

51-60).

Regarding claim **27**, Herz teaches wherein a said composite score is determined

for a plurality of said videos, and said video are ranked based, at least in part, upon said

composite scores. (column 14, lines 20-33).

Regarding claim **51**, Herz teaches wherein said ranking determines said first

video as more desirable for said user than said second video (column 10, lines 51-60).

Regarding claim **52,** Herz teaches wherein said ranking determines said second

video as more desirable for another user than said first video (column 10, lines 51-60).

Regarding claim **53,** Herz teaches wherein said ranking is in a relativistic manner

(column 10, lines 51-60).

Referring to claim 57, Herz discloses a method for selecting at least one of audio

and video (figure 1) comprising:

(a) receiving user attribute information corresponding to user preferences,

wherein said user attribute information includes a plurality of preferences, wherein said

preferences include hierarchical levels so that data at a second level is included with

data at a first level, wherein at least one of said preferences is at a first level and at

least two of said preferences is at a second level dependent upon said at least one of

said preferences at said first level wherein said first level includes preferences that

together encompass all preferences of said second level (figure 1, part 104; column 17, lines 52-61; column 27, line 62 to column 28, line 14);

(b) receiving program attribute information corresponding to said at least one of an audio and video (figure 1, part 102; column 28, lines 6-14);

evaluating program information and user attribute information by:

(i) determining a first value based upon, at least in part, whether a first a portion of said user attribute information matches a portion of said program attribute information (column 17, lines 52-61; column 27, line 62 to column 28, line 14), and

(ii) determining a second value based upon, at least in part, whether a second portion of said user attribute information matches a portion of said program attribute information (column 17, lines 52-61; column 27, line 62 to column 28, line 14; Note: as each mood would be matched for the programming, both moods would be assigned a matching value);

(d) if at least one of said first value or said second value indicates non-desirability of said at least one of audio and video discarding said at least one of said audio and video in response to receiving said user attribute information and said program attribute information for said at least one of said audio and video, as a desirable said at least one of audio and video for said user (column 17, lines 52-61; column 27, line 62 to column 28, line 14)

(e) if said at least one of audio and video is not discarded as a result of step (d) then determining a third value based upon, at least in part, said first value and said second value (column 17, lines 52-61; column 27, line 62 to column 28, line 14).

Herz does not disclose a method wherein at least one of said program attribute information is at a first level and at least two of said program attribute information is at a second level dependent upon said at least one of said program attribute information at said first level;

(c) jointly evaluating said first level of said hierarchical levels of said program attribute information with said second level of said hierarchical levels of said program attribute information and processing preferences of at least said first level of said hierarchical levels of said program information with and said second level of said hierarchical levels of said user attribute information to evaluate said user attribute information and said program attribute.

In an analogous art, Finseth teaches a method wherein at least one of said program attribute information is at a first level and at least two of said program attribute information is at a second level dependent upon said at least one of said program attribute information at said first level;

(c) jointly evaluating said first level of said hierarchical levels of said program attribute information with said second level of said hierarchical levels of said program attribute information and processing preferences of at least said first level of said hierarchical levels of said program information with and said second level of said hierarchical levels of said user attribute information to evaluate said user attribute information and said program attribute (column 12, lines 47-48 and 53-57; figure 4, parts 98A; Note: as the hierarchical program attributes found in figure 4 of Finseth are

found in the inputs to the agreement matrix calculation in Herz (column 28, lines 6-14) it

is interpreted as these hierarchical attributes being jointly processed).

At the time of the invention it would have been obvious for one of ordinary skill in

the art to use the hierarchical program attribute information taught by Finseth in the

method disclosed by Herz. The motivation would have been to provide a more intuitive

method of filtering the display of programs when provided in the EPG.

2.   Claims 15, 28, 59, and 61-64 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Herz in view of Finseth as applied to claim 10 above, and further in

view of Graves.

Referring to claim 15, Herz and Finseth do not disclose a method wherein said

determining the desirability includes and operation where, (a) said first program attribute

information includes a first attribute and a second attribute, where said second attribute

has a first relatively smaller presence than said first attribute in said first program; (b)

said second program attribute information includes said first attribute and said second

attribute, where said second attribute has a second relatively smaller presence than

said first attribute in said second program, where said first relatively smaller presence is

smaller than said second relatively smaller presence; and (c) said determining said

relative ranking indicates said second program as more desirable than said first

program.

In an analogous art, Graves teaches a wherein said determining the desirability

includes and operation where, (a) said first program attribute information includes a first

attribute and a second attribute, where said second attribute has a first relatively smaller presence than said first attribute in said first program (See Fig. 3, Fig. 5 A program could have a smaller value for one attribute versus another i.e. Actor #1 has a smaller value (weight) than Story appeal); (b) said second program attribute information includes said first attribute and said second attribute, where said second attribute has a second relatively smaller presence than said first attribute in said second program, where said first relatively smaller presence is smaller than said second relatively smaller presence (See Fig. 3, Fig. 5 A program could have a smaller value for one attribute versus another i.e. Actor #1 has a smaller value(weight) than Story appeal and a program could have a smaller value for an attribute when compared to that value for that attribute of another program); and (c) said determining said relative ranking indicates said second program as more desirable than said first program (See Col. 6 lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second program could receive a higher ranking than a first program).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the preference modification taught by Graves to the method disclosed by Herz and Finseth. The motivation would have been to enable the preferences to be more accurate, thereby making the system more enticing to possible customers.

Regarding claim **28,** Herz and Finseth do not disclose a method wherein said composite score is determined free from comparing said first score and said second score.

In an analogous art, Graves teaches wherein said composite score is determined free from comparing said first score and said second score (See Col. 8 Eqn 1 The composite score is the sum of the first score and the second score. Summing is free from comparison).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the preference modification taught by Graves to the method disclosed by Herz and Finseth. The motivation would have been to enable the preferences to be more accurate, thereby making the system more enticing to possible customers.

Regarding claim **59,** Herz and Finseth do not disclose a method wherein said evaluating is based upon a summation operation.

In an analogous art, Graves teaches wherein said evaluating is based upon a summation operation (See Col. 8 Eqn. 1). From the specification the AND function is an averaging function (Page 131 lines 13-14), the result of Graves summation divided by the number of elements summed (n).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **61,** Herz and Finseth do not disclose a method wherein at least one of said first operator and said second operator is an "OR" function.

In an analogous art, Graves teaches wherein at least one of said first operator and said second operator is an "OR" function (See Col. 8 Eqn. 1). From the specification the "OR" function is a summation (Page 135 line 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **62,** Herz and Finseth do not disclose a method wherein said first operator and said second operator are "OR" functions.

In an analogous art, Graves teaches wherein said first operator and said second operator are "OR" functions (See Col. 8 Eqn. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **63,** Herz and Finseth do not disclose a method wherein said first set and said second set depend from the same preference within said hierarchy.

In an analogous art, Graves teaches wherein said first set and said second set depend from the same preference within said hierarchy (See Col. 8 Eqn. 1The first set

and second set are on the same level of the hierarchy and depend from the overall

preference).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Herz with the teachings of Graves so that the

result of his summation equation was divided by the number of elements added

together to create normalized grades.

Regarding claim **64,** Herz and Finseth do not disclose a method wherein said first

set and said second set have a different number of preferences.

In an analogous art, Graves teaches wherein said first set and said second set

have a different number of preferences (See Col. 8 Eqn. 1 i values 1 to n could be an

odd number divided into two sets).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Herz with the teachings of Graves so that the

result of his summation equation was divided by the number of elements added

together to create normalized grades.

(10) Response to Argument

The following ground(s) of rejection are applicable to the appealed claims:

Page 10, last paragraph:

The appellant describes the understood definition of a hierarchical structure, of

which the examiner agrees.

Page 11, first paragraph:

The appellant argues that their use of the term hierarchy is correct. The example

provided using action, martial arts, and war genres is consistent with the examiner's

understanding of this term. Referring back to page 22 (first paragraph) of the

appellant's last response filed (5/23/08), the appellant argues that that as the claimed,

"the higher order level (the first level) must include preferences that together

encompass all preferences of the level below it (the second level)." Based on this

section, it is the interpretation of the examiner that the appellant was trying to say that

all action films are also films about martial arts and war. As the appellant has better

clarified their definition of hierarchy, the objection would be withdrawn.

Referring to Herz, there many ways to use user's preferences to create virtual

channels by selecting programming that would interest the user (column 9, lines 31-52).

One of the ways that the system can suggest programming is by matching the

programming attributes (genres) against user's moods (column 17, lines 27-34). These

moods are described as being in the form of a tree (or hierarchy), wherein moods can

be subsets of moods depending on what time it is (column 17, lines 52-61). Herz

discloses that "each customer preferably has a generic mood and may also have some

specific moods" (column 17, lines 44-45). The term preferably indicates that these

moods are in fact user preferences, which are hierarchical in structure as shown above.

Page 11, paragraph beginning with "In each":

The appellant states that the examiner has misconstrues the arguments, cites portions of the cited art that actually reinforce the appellant's arguments, and mistakes the disclosure of the prior art in the previous actions. The examiner does not agree with the statement, but every attempt will be made in this response to answer the appellant's arguments.

Page 11, section beginning with "Independent claim 1" and continued onto page 12:

The appellant describes the user preferences and program attributes found in claim 1.

Page 12, second paragraph:

The appellant states how the references are being used to reject the limitations.

Page 12, last paragraph:

The appellant argues (lines 8-10) that the moods taught by Herz cannot be interpreted as preferences. As shown above Herz states that the moods reflect the preferences of the users (column 17, lines 44-45) and can be used to match up programming for presenting the programming to the user (column 17, lines 17-34). These moods are arranged in a tree, which is interpreted as a hierarchical structure (column 17, lines 52-61).

The appellant continues to argue (lines 10-14) that the favorable, unfavorable, and neutral values for the preferences (column 10, lines 51-60; column 11, lines 6-12)

cannot be applied to the moods taught by column 17. The sections (column 10, lines 51-60; column 11, lines 6-12) relate to the cv and cp values which are defined above. The definition given for a cv is "the customer's i's rating for characteristic k" (column 10, line 31). The definition given for a cp is "objective weighting of program j for characteristic k" (column 10, line 37). The examiner's interpretation of this section is that any characteristic (cv) that can be used to select a program (cp) can be assigned a value (being either positive, negative or neutral).

The appellant continues to argue (line 14-19) that the examiner is using a "bait and switch" technique to combine these sections and is in error. There has been no section of Herz cited that would indicate why the moods could not be considered characteristics. As shown above, Herz teaches that anything used to select a program for the user could be considered a characteristic and therefore could be assigned the values taught (column 10, lines 51-60; column 11, lines 6-12). Herz actually assigns a specific value (column 18, lines 6-17; sf), which could be assigned to the mood by the user. While this section does not state what types of values could be assigned, one of ordinary skill in the art could interpret that the cv and sf variables are equivalent and therefore obey the same rules.

Page 13, first paragraph:

The appellant again argues that the moods taught by Herz and not hierarchical. To repeat a response from above, the moods are described as being in the form of a tree (or hierarchy), wherein moods can be subsets of moods depending on what time it

is (column 17, lines 52-61). Herz discloses that "each customer preferably has a generic mood and may also have some specific moods" (column 17, lines 44-45). The term preferably indicates that these moods are in fact user preferences, which are hierarchical in structure as shown above.

Page 13, second paragraph:

The appellant argues that as the hierarchy of the moods is based on a temporal base and is therefore not a real hierarchy. The examiner agrees with the appellant, but as there is nothing in the claims that state that the hierarchy cannot be temporally based, this argument is moot. The broadness of the claims allows for different types of hierarchies to be used to reject the limitation.

Page 13, paragraph beginning with "Merely":

The appellant argues that the abstract states that may be embodied by a separate user profile, which itself includes a respective set of user preferences. As the abstract does not mention moods at all and no other section of Herz was cited to back up this claim, this argument is considered moot.

Page 13, paragraph beginning with "To be clear":

The appellant admits that there is nothing in the disclosure of Herz to state that the moods are in fact user profiles with their own set of user preferences.

Page 13, last paragraph continuing onto the next page:

The appellant explores the idea that the user preferences are in fact hierarchical. The appellant gives an example using Action, Drama, R-rated, PG-rated, Comedy, and Stereo. The appellant seems to be making the assumption that because the examiner is interpreting the moods as hierarchical, that all preferences are hierarchical. The examiner has never made such a claim. The examiner agrees that other preferences taught by Herz are not arranged hierarchical as of the last reading of the reference. Of course, the section of focus has been the moods and therefore the other portions of the reference have not been read over as closely so there could be a portion of the reference that teaches otherwise.

Page 14, second paragraph:

The appellant continues to argue that the other preferences taught by Herz are not hierarchical. Referring back to claim 17 (lines 52-61) the moods (which are considered one type of preference that could be used) are in fact hierarchical in a temporal fashion as the appellant has agreed (Appeal Brief: page 13, paragraph beginning with "The primary reference": lines 6-10).

Page 14, paragraph beginning with "These arguments":

The appellant argues that Herz (column 17, line 65 to column 18, line 5) teaches that each mood is a profile and therefore cannot be considered to be a preference. The appellant is misinterpreting this section of the reference. First, Herz states that the

moods can be the responsibility of the user (column 17, lines 65-66). Second, the

reference states that ballots are used to create the profiles, wherein each ballot may

correspond to a mood (column 17, lines 66-67). To the examiner, this statement says

that the customer may be given multiple ballots to create their profiles. Where the user

would like to define more than one mood, the user would need to fill out more than one

ballot. The next section is where the appellant derives all of his/her evidence (column

17, line 67 to column 18, line 2), wherein Herz states that a mood may be equivalent to

a customer profile. This statement is not as conclusive as the appellant is stating. The

interpretation of this statement by the examiner is that if the user only provides a single

ballot with a mood selected, that this mood could be considered a profile. This is further

supported in the next section (column 18, lines 2-4), wherein it is stated that at least the

generic mood is required by the system. The examiner interprets this section as stating

that if more than one mood is indicated in a ballot (as is done in the hierarchical

example given), that the moods cannot be viewed as a profile as they contain more than

the generic mood.

Page 15, section starting with "Herz":

     The appellant finishes the above argument about the profiles responded to

above. The appellant also argues that the system of Herz is unable to distinguish a

"speculative" mood from a "peaceful" mood as such, or a "violent" mood from an

"excited" mood, etc. The appellant has provided no citation of this claim. The opposite

seems to be true, as why have the user fill out ballots to define moods if the system

cannot distinguish from them in order to make programming choices? The appellant

again points out that the moods are only hierarchical in a temporal manner.

Page 15, last paragraph:

The appellant argues (lines 1-6) that in the last office action that he did not

properly answer the argument that was made in the preceding paragraphs. The

appellant can now accept that the argument can be considered responded to.

The appellant continues to argue that if the examiner can claim a portion of a

reference is part of an alternative embodiment, that he must show that the moods can

be assigned a numerical value. First, the examiner was arguing back that only a small

portion (column 18, lines 1-2) that said that a mood may be equivalent to a customer

profile could be a different embodiment as the word **may** is used. As this has been

responded to in a more detailed manner above this is considered moot, but the

examiner will again point out why the moods could be assigned values. Herz states

explicitly that the moods can be assigned a satisfaction factor (sf) to define how

effective the moods are considered in reference to the user preferences. Back on

column 10 (lines 31, 37, and 51-63) and column 11 (lines 6-12), it is stated that

characteristics can be assigned positive, negative and neutral values. Note, that these

statements do not mention moods specifically, but they do not explicitly state that the

values do not apply. If the patent disclosures were always concise and not up to

interpretation, then patent prosecution would often be much simpler. But that is not the

case, and examiners and appellants can attempt to explain the references to each

other.

The appellant continues to argue (page 16) about how a negative value could be

assigned to a mood. Just as is stated on column 11 (lines 6-12), a negative rating

would provide a way for the user to prohibit the mood and therefore programs that

matched up with the mood. For example, if a person's son was in a violent mood from

4-5pm on Fridays, that person's parent could set a negative value to that mood so

violent programs would not be suggested for their child. While this example is not given

in Herz, the appellant only asked for a hypothetical.

Page 16, paragraph beginning with "The Examiner":

The appellant argues an example using genres against Herz teaching

hierarchies. This is a repeat of an argument from a previous response, where the

examiner responded to state that arguing genres is a moot point as the examiner is not

using anything related to genres in the rejection. The appellant comes back to say that

as moods are profiles, that they would include genres and all other preferences that are

contained in the profiles. As had been show above, the moods are not profiles and

therefore this argument is moot. The appellant then argues that he/she is confused on

the examiner separating preferences and moods as the examiner has stated that a

mood is a preference and not a profile. The examiner's response related to the fact that

it has not been claimed that all the preferences taught by Herz are hierarchical, only the

moods are according to the disclosure. Herz teaches many types of preferences and all

the rules of one type do not automatically apply to the other types. By the appellant's

logic, moods are hierarchical and moods are preferences; therefore all preferences are

hierarchical. This logic is not supported by the disclosure.

Page 16, last paragraph:

The appellant again argues that the hierarchical nature of the moods is temporal,

or which the examiner agrees. The appellant responds to the examiner's statement that

the claim's do not contain a limitation that would limit the hierarchical nature not to be

temporally based by saying that the claims do not **read** on hierarchical nesting. It is the

examiner's interpretation of the claims that they do not contain any language that

suggest this.

Page 17, paragraph beginning with "See Office":

The appellant is arguing that a previous response in an office action did not

answer the points made in the argument. As the missing points are argued on the next

page of the appeal brief, they will be responded to next.

Page 18, paragraph "Thus, the applicant":

The appellant argues that he/she argued that the moods of Herz did not take on

both positive and negative values. As the appellant does not specify if they mean

simultaneously or an either/or situation, both will be answered. The appellants claims

do not include the limitation of simultaneously having positive and negative values

associated with them. The moods can have either positive, negative or neutral values

assigned to them as has been pointed out above. Herz teaches that the moods can

have positive values (column 18, lines 6-17); and Herz also teaches that characteristics

can have positive, negative, and neutral values (column 10, lines 31 and 51-63; column

11, lines 6-12). It is the opinion of the examiner that these additional teachings can be

applied to the moods as they can be considered characteristics and there is nothing in

Herz prohibiting such an interpretation.

Page 18, paragraph "The second passage":

    The appellant argues that as the sf values are based on time, they could not be

given negative values. The examiner agrees with this statement. The examiner has

never stated that the sf and cv values are the same thing. The examiner has used the

value assigned to the moods using the sf as proof that applying the cv values taught on

columns 10 and 11 would be possible as the moods can have a value associated with

them and they are characteristics.

Page 18, last paragraph continuing onto the next page:

    The appellant is arguing a response given in a previous action and is not longer

relied upon. Therefore this argument is moot.

Page 19, paragraph beginning with "Here the Examiner":

The appellant is arguing that the examiner is interpreting the claim limitation backwards. Specifically that the mood defining a smaller window of time is does not include the preferences of the mood defined in the larger window of which the smaller window is a subset of. As can be seen in the appellant's definition of a hierarchy (Appeal Brief: first paragraph of page 11) there is nothing in either the war or martial arts genres that indicate that they would be action movies. A was movie could be a drama about the love between a nurse and a wounded soldier and a martial arts movie could be a documentary about a martial arts star. Only when they are nested under the action genre in a hierarchical tree, wherein the war and martial arts genres are subsets of the action genre is it clear that they are both war/action and martial arts/action movies. The same can be said about the moods taught by Herz. Only when a mood becomes a subset of another mood in the same timeslot (but with a smaller window) is there any information about the higher level mood incorporated in the lower level mood. If there was only to be one level of mood, Herz would not have disclosed nesting the moods, but instead Herz would have described replacing or writing the existing mood.

Page 19, last paragraph:

The appellant argues that the examiner is misinterpreting the claim language by reading the claims as jointly processing the user preferences and program information and not both levels of the user preferences and the program information as claimed. The examiner did not misinterpret the claims and has rejected the limitations described by the appellant. The moods are jointly processed (column 17, lines 61-64) as it is

stated that the lower level is generally used to select the programming, the examiner

interprets this statement as meaning that the majority of weight is given to the lower

level as it would be more accurate than the higher level. Going back to the appellant's

example, suggesting a war movie over a general action movie would mean a better fit if

the user enjoyed both action movies and war movies. The hierarchy of Finseth is also

based on time (figure 4), the program recommender taught by Herz would not suggest a

mystery on in the next hour when there is a mystery currently being broadcast.

Therefore both of the references teach jointly processing the information.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Justin Shepard

/Justin E Shepard/

Examiner, Art Unit 2424

Conferees:

/Christopher Kelley/

Supervisory Patent Examiner, Art Unit 2424

/Vivek Srivastava/

Supervisory Patent Examiner, Art Unit 2426